

## REMARKS

### I. Substance of the Telephone Interview on October 19, 2006

In addition to the Interview Summary dated October 23, 2006, prepared by the Examiner, the undersigned hereby amplifies the substance of the interview as follows:

With the proposed changes from “limited axial rotation” to “limited tilting” of plates 100 and 101, the undersigned discussed the difference between the present invention and the device shown in the Cauthen reference. The undersigned presented arguments to the Examiner that the Cauthen reference fails to show the “tilting” of the upper and lower plates of the present invention. The tilting aspect of the present invention is shown in Figure 16, i.e. small gaps between collar 103 and plate 100 and between collar 103 and plate 101, with the plates 100 and 101 otherwise supported by disk 102. On the other hand, the device of the Cauthen reference does not allow such “tilting.” While Figure 3 of the Cauthen reference superficially shows gaps between threads 82 and the first element 20 and between threads 82 and the second element 22, it is clear that the gaps are shown for viewing purposes and cannot in fact be air space between the first and second elements 20 and 22 and threads 82 so that first and second elements 20 and 22 are unsupported. During the telephone interview, the Examiner did not cite to anything in the Cauthen reference that shows the “tilting” feature of the present invention.

The undersigned indicated to the Examiner that an Amendment After Final would be submitted clarifying the arguments presented during the interview.

### II. Claim Rejections - 35 U.S.C. §112, first and second paragraphs

Reconsideration is requested of the Examiner's rejection of Claims 1-7, 11-15, 17-20, 24, 38, 39, and 43-46 under 35 U.S.C. 112, first and second paragraphs, as failing to comply with the written description requirement and as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. In particular, the Examiner indicated that the "at least one" temporary stabilizing means and "allows limited axial rotation" of Claims 1 and 24 are not supported in the original disclosure.

Claims 1 and 24 are amended to remove these limitations. As discussed with the Examiner during the telephone interview, the term "limited axial rotation" is meant to be "tilting" as understood by the Examiner. Therefore, this rejection is believed to be moot.

The remaining pending claims are dependent upon amended Claim 1, and this rejection is also believed to be moot as to these claims.

### III. 35 U.S.C. §103 (Cauthen and Zdeblick)

Reconsideration is requested of the Examiner's rejection of Claims 1-6, 11-13 and 43-45 under 35 U.S.C. 103(a) as being unpatentable over Cauthen, U.S. Patent No. 6,019,792, and Zdeblick et al., U.S. Patent No. 6,881,228. The Examiner relied on the Cauthen reference as disclosing all the elements of the claims except for a substantially flat plate and relied on the Zdeblick reference for disclosing this element.

As discussed with the Examiner during the telephone interview, the Cauthen reference fails to teach a device with a temporarily stabilizing means that allows limited tilting of the upper and lower plates. See, §I, supra. Neither the threads 82 nor the clips 94 (shown in Figs. 2 and 3 of the Cauthen reference), which the Examiner relied on as the temporarily stabilizing means, is spaced from the first or second elements 20 and 22 to allow the limited tilting of the first and

second elements 20 and 22 with respect to each other. Threads 82 and clips 94 of the Cauthen reference are in constant contact with the first and second elements 20 and 22 to restrict all tilting while they are present. Col. 6, line 43 – Col. 7, line 30 (e.g. “for temporarily rigidly coupling the first element 20 to the second element 22 to prevent relative movement therebetween”).

As clarified during the telephone interview, the temporarily stabilizing means of the present invention is not in constant contact with the upper and lower plate members but is spaced apart from the upper or lower plate members to allow limited tilting of the plate members with respect to each other while the temporarily stabilizing means is present. See, Figure 16 (gaps between the temporarily stabilizing means and the upper and lower plate members), Claims 1 and 24. Therefore, the Cauthen reference does not disclose, teach or suggest, at least, the temporarily stabilizing means of amended Claims 1 and 24.

Similarly, the Zdeblick reference fails to teach, disclose or suggest the element lacking in the Cauthen reference, i.e. a temporarily stabilizing means that is spaced apart from the upper or lower plate members to allow limited tilting of the plate members relative to each other. Therefore, amended Claims 1 and 24, and all claims dependent therefrom, are not unpatentable over the Cauthen reference in view of the Zdeblick reference.

#### IV. 35 U.S.C. §103 (Cauthen, Zdeblick and Shinn)

Reconsideration is requested of the Examiner’s rejection of Claims 24, 14-15, 38 and 39 under 35 U.S.C. 103(a) as being unpatentable over Cauthen, U.S. Patent No. 6,019,792, and Zdeblick et al., U.S. Patent No. 6,881,228, and further in view of Shinn et al., U.S. Patent No. 5,683,465. The Examiner relied on the Cauthen and Zdeblick references as disclosing all the

elements of the claims except for a “substance with anti-microbial drug eluting factors” and relied on the Shinn reference as disclosing such element.

As set forth in §III, supra, the Cauthen and Zdeblick references fail to teach, disclose or suggest a temporarily stabilizing means that is spaced apart from the upper or lower plate members to allow limited tilting of the plate members with respect to each other. Similarly, the Shinn reference fails to teach, disclose or suggest a temporarily stabilizing means that is spaced apart from the upper or lower plate members to allow limited tilting of the plate members with respect to each other. Therefore, amended Claims 1 and 24, and all claims dependent therefrom, are not unpatentable over the Cauthen and Zdeblick references in view of the Shinn reference.

#### V. Response to Advisory Action

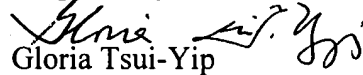
As discussed during the telephone interview between the Examiner and the undersigned on October 23, 2006 (as set forth above in §I, supra, and the Interview Summary dated October 23, 2006), the Examiner agreed that “as shown, applicant’s device would limit relatively tilting of plates 100 and 101 but not rotation.” Further, as shown in Figure 16, there are small gaps between collar 103 and plate 100 and between collar 103 and plate 101, with the plates 100 and 101 otherwise supported by disk 102. Therefore, the drawing as originally submitted clearly show the limitation in the claims as amended herein, i.e. the “temporarily stabilizing means is space from said upper or lower substantially flat plate members to allow limited tilting of said upper and lower substantially flat plate members with respect to each other.”

## VI. Conclusion

If the Examiner has any questions on the above and believes a telephone conference will aid in the allowance of the application, please contact the undersigned by telephone.

By virtue of the Applicants' amendment to the claims and remarks thereto, all outstanding grounds of rejection and objection have been addressed and dealt with and, based thereon, it is believed that the application is now in condition for allowance and such action is respectfully solicited. Upon allowance of the generic Claim 1, Applicants respectfully request that the withdrawn claims directed to the non-elected embodiments be similarly allowed.

Respectfully submitted,

  
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